

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: DEPUY ORTHOPAEDICS,	§	
INC. PINNACLE HIP IMPLANT	§	MDL Docket No.
PRODUCTS LIABILITY	§	
LITIGATION	§	3:11-MD-2244-K
	§	
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This Document Relates To:	§	
	§	
<i>Lay v. DePuy Orthopaedics, Inc., et al.</i>	§	
No. 3:11-cv-03590-K	§	
	§	
<i>Herlihy-Paoli v. DePuy</i>	§	
<i>Orthopaedics, Inc., et al.</i>	§	
No 3:12-cv-04975-K	§	
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Special Master's Pretrial Report and Supplemental Scheduling Order

On December 20, 2013, the Court entered scheduling orders in *Lay v. DePuy Orthopaedics, Inc., et al.*; No. 3:11-cv-03590-K [Dkt. 17] and *Herlihy-Paoli v. DePuy Orthopaedics, Inc., et al.*; No. 3:12-cv-04975-K [Dkt. 13]. The orders require both cases to be ready for trial on September 1, 2014, and prescribe deadlines for amended pleadings, expert designations, and *Daubert* and dispositive motions. With a few limited exceptions,¹ all discovery is complete and the Court has ruled on all outstanding motions. Both cases will be ready for trial by September 1, 2014.

¹The only unresolved motion is a *Daubert* motion seeking exclusion of testimony provided by W. Gregory Sawyer filed by Defendants last week. In addition, the parties have two fact-witness depositions to conduct in the coming weeks.

Through telephonic and in-person conferences, the parties have agreed to the following schedule for management of pretrial matters.

Witnesses

Plaintiffs have identified the following witnesses they will call at trial (with Toni and Rodney Lay instead of Kathleen and John Paoli in the second trial):

1. Kathleen Paoli - testifying live and under Plaintiffs' control;
2. John Paoli - testifying live and under Plaintiffs' control;
3. Scott Bayley - testifying live and under Plaintiffs' control;
4. David Altman - testifying live and under Plaintiffs' control;
5. David Allmacher - testifying by videotape deposition;
6. Henrik Malchau - expected to testify live and under Plaintiffs' control; however, the parties will prepare testimony by videotape deposition;
7. Greg Sawyer - testifying live and under Plaintiffs' control;
8. Sonny Bal - testifying live and under Plaintiffs' control;
9. Francis Gannon - testifying live and under Plaintiffs' control;
10. Pam Plouhar - testifying live and under Defendants' control;
11. Andrew Ekdahl - testifying live and under Defendants' control;
12. Thomas Schmalzried - testifying live and under Defendants' control;
13. John Fisher - testifying live and under Defendants' control;
14. Antoni Nargol - testifying by videotape deposition; and
15. David Langton - testifying by videotape deposition.

Plaintiffs have identified the following witnesses they may call at trial:

1. John Ziegert - testifying live and under Plaintiffs' control;
2. John Abramson - testifying live and under Plaintiffs' control;
3. Nicholas Jewell - testifying live and under Plaintiffs' control;
4. Graham Isaac - testifying by videotape deposition;
5. Cheryl Hastings - testifying by videotape deposition;
6. Matthew Reimink - testifying by videotape deposition;
7. Polly Cary - testifying by videotape deposition;
8. Brian Haas - testifying by videotape deposition;
9. Paul Berman - testifying by videotape deposition;
10. Paul Voorhorst - testifying by videotape deposition; and
11. Charles Engh, Jr. - testifying by videotape deposition.

Defendants have identified the following witnesses they will call at trial:

1. Tony Cutshall - testifying live and under Defendants' control;
2. Leanne Turner - testifying live and under Defendants' control;
3. William Barrett - expected to testify live and under Defendants' control; however, the parties will prepare testimony by videotape deposition;
4. Frank Chan - expected to testify live and under Defendants' control; however, the parties will prepare testimony by videotape deposition;
5. William Griffin - expected to testify live and under Defendants' control; however, the parties will prepare testimony by videotape deposition;
6. James Lancaster - expected to testify live and under Defendants' control; however, the parties will prepare testimony by videotape deposition;
7. Janet Arrowsmith - testifying live and under Defendants' control;
8. Barbara Boyan - testifying live and under Defendants' control;
9. Patricia Campbell - testifying live and under Defendants' control;
10. Roy Crowninshield - testifying live and under Defendants' control;
11. Roger Emerson - testifying live and under Defendants' control;
12. Wilson Hayes - testifying live and under Defendants' control;
13. Eric Heinrich - testifying live and under Defendants' control;
14. Kevin Math - testifying live and under Defendants' control;
15. Scott Nelson - testifying live and under Defendants' control; and
16. Timothy Ulatowski - testifying live and under Defendants' control.

Defendants have identified the following witnesses they may call at trial:

1. Anthony Berriman- testifying live and under Defendants' control;
2. Rodrigo Diaz - testifying by videotape deposition;
3. Derek Edgar - testifying live and under Defendants' control;
4. Christine Buckley - testifying live and under Defendants' control;
5. Kirk Kindsfater - testifying live and under Defendants' control;
6. John Emenhiser - testifying live and under Defendants' control;
7. Richard Farrar - testifying by videotape deposition;
8. Catherine Hardacker - testifying by videotape deposition;
9. Paul Kurring - testifying by videotape deposition;
10. Donald McNulty - testifying by videotape deposition;
11. Todd Smith - testifying by videotape deposition;
12. Frank Bono - testifying by videotape deposition;
13. Cheryl Hastings - testifying by videotape deposition;
14. Thomas Fehring - testifying by videotape deposition;
15. Paul Bills - testifying live and under Defendants' control;
16. Edward Boyer - testifying live and under Defendants' control;
17. Alan Dorris - testifying live and under Defendants' control;

18. John Fisher - testifying live and under Defendants' control;
19. Jeremy Gilbert - testifying live and under Defendants' control;
20. Cato Laurencin - testifying live and under Defendants' control;
21. Dana Medlin - testifying live and under Defendants' control;
22. Lisa Pruitt - testifying live and under Defendants' control; and
23. Mary Beth Schmidt - testifying live and under Defendants' control.

Designations for testimony a party intends to offer by videotape deposition were exchanged by July 28, 2014; counter-designations and objections to designated testimony shall be exchanged by August 8, 2014; objections to counter-designated testimony and limited supplemental designations shall be exchanged by August 15, 2014; and, objections to supplemental designations shall be exchanged by August 18, 2014. Objections are waived if they do not identify the precise legal basis by reference to a specific rule or case.

Exhibits

The parties have already exchanged exhibit lists. Objections to the exhibits shall be exchanged by August 7, 2014. Objections are waived if they do not identify the legal basis by reference to a specific rule or case. The parties shall inform the Special Master by August 13, 2014, on any points of agreement.

The parties may exchange limited supplemental exhibit lists by August 11, 2014, and objections to the supplemental exhibit list shall be exchanged by August 15, 2014. Objections are waived if they do not identify the legal basis by reference to a specific rule or case.

Motions in *Limine*

The parties have already exchanged proposed motions in *limine*. The parties shall

inform the Special Master by August 1, 2014, on any points of agreement. The Special Master will conduct a conference call on August 4, 2014, to set a future submission and briefing schedule, if necessary.

Jury Questionnaires, Jury Instructions and Verdict Form

The parties have already exchanged proposed jury questionnaires, jury instructions and verdict forms. The parties shall inform the Special Master by August 8, 2014, on any points of agreement.

Conference on Outstanding Pretrial Matters

On August 18, 2014, the parties will meet with the Special Master in Dallas to conference on outstanding pretrial matters.

Dated: July 29, 2014.

Respectfully submitted,

/s/ James M. Stanton

James M. Stanton

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COURT-APPOINTED SPECIAL MASTER

AGREED TO BY:

/s/

W. Mark Lanier

For the Plaintiffs' Executive Committee

/s/

Stephen J. Harburg

For the Defendants

CERTIFICATE OF SERVICE

I certify this document was electronically filed via ECF which, pursuant to Northern District of Texas Local Rule 5.1(d), constitutes service pursuant to the Federal Rules of Civil Procedure.

/s/ James M. Stanton

James M. Stanton